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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/973,081	10/10/2001	William D. Swart	SEDN/12163	5256

56015 7590 08/29/2007

PATTERSON & SHERIDAN, LLP/
SEDNA PATENT SERVICES, LLC
595 SHREWSBURY AVENUE
SUITE 100
SHREWSBURY, NJ 07702

EXAMINER	
SALTARELLI, DOMINIC D	
ART UNIT	PAPER NUMBER
2623	

MAIL DATE	DELIVERY MODE
08/29/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	09/973,081	SWART ET AL.	
	Examiner	Art Unit	
	Dominic D. Saltarelli	2623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *19 July 2007*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *11-13* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *11-13* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on July 19, 2007 has been entered.

Response to Arguments

2. Applicant's arguments filed July 19, 2007 have been fully considered but they are not persuasive.

Applicant argues that the combination of Hendricks, Kenner, Campanella, and Farry fail to disclose the claimed limitations of "determining if the content is to be delivered directly or indirectly, wherein directly delivering content comprises providing the content to the user terminal without traversing any modules between a remote content server and the user terminal, thereby bypassing an aggregator", first by arguing that Kenner does not disclose "determining if the content is to be delivered directly or indirectly", but only discloses supporting alternate routes (applicant's remarks, page 6).

In response, the differences between a first and second route for routing video content to a user's terminal, as described by Kenner, qualifies the first as a

"direct" route and the second and an "indirect" route in the following manner. The downloading operation is controlled by a program called a DSI which is created on the "most appropriate and efficient location" as determined by the PIM (Kenner, col. 12, lines 26-29). This DSI then establishes the "direct" route for downloading content. However, if the determination is made that this "most appropriate and efficient location" becomes overloaded or otherwise undesirable, a remote DSI on a remote system is created for establishing a less direct route from the remote system to the user terminal (col. 12, lines 42-55), so that if the most efficient [direct] path is not available, then idle system resources are identified to provide a less direct path to ensure the requested video data makes to the requesting user. This is the strength of the system disclosed by Kenner, because if a direct route (in this case, the most efficient, shortest path) is available, the DSI will use it, but if this direct route is not available, the system has the ability to identify other indirect routes to ensure that requested video data is delivered.

Second, applicant argues that impermissible hindsight is used in combining the teachings of Farry with those of Hendricks, Kenner, and Campanella citing the fact that Farry does not use virtual circuits to actively bypass anything and that Kenner does not teach allowing a remote SRU to directly communicate with the user terminal (applicant's remarks, page 7).

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). In this case, the establishment of direct links through a switch using virtual circuits was motivated by the teaching found in Farry that the availability of such paths lowers routing delays, the bypassing of an aggregator is simply a by-product of the combination. Further, Kenner's lack of a teaching which allows an SRU to connect to a user terminal does not obviate the possibility of modification in view of Farry.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hendricks et al. (5,600,573, of record) [Hendricks] in view of Kenner et al. (5,956,716, of

record) [Kenner], Campanella (5,864,546, of record), and Farry et al. (5,608,447, of record) [Farry].

Regarding claim 11, Hendricks discloses a method for acquiring and delivering content, comprising:

receiving a content download request from a user terminal (video on demand requests, col. 13, lines 34-40; col. 13 line 66 – col. 14 line 14; and col. 19, lines 46-54);

forwarding the requested content toward the user terminal (col. 6, lines 15-43), and

logging the delivery in a server database (col. 20, lines 50-64).

Hendricks fails to disclose determining if the request is a local download request or a remote download request and if the request is a remote download request, determining if the content is to be delivered directly or indirectly, wherein directly delivering content comprises providing the content to the user terminal without traversing any modules between a remote content server and the user terminal, thereby bypassing an aggregator, and if the content is to be delivered directly, establishing a communications link from a remote content server to the user terminal, thereby by bypassing an aggregator, and validating the delivery of the content to the user terminal.

In an analogous art, Kenner teaches a method for acquiring and delivering content comprising receiving a content download request from a user terminal (col. 8, lines 14-25), determining if the request is a local download request or a

remote download request (a check is first performed to see if requested content is locally available, col. 9, lines 42-54) and if the request is a remote download request, determining if the content is to be delivered directly or indirectly (the system can establish both direct links and indirect links, col. 12, lines 42-55), and if the content is to be delivered directly, and establishing a communications link from a remote content server to the user terminal (via the DSI, col. 9, lines 31-41), for the benefit of providing fast access to a wide selection of content distributed across many networks (col. 6, lines 42-52).

It would have been obvious at the time to a person of ordinary skill in the art to modify the method of Hendricks to include determining if the request is a local download request or a remote download request and if the request is a remote download request, determining if the content is to be delivered directly or indirectly, and if the content is to be delivered directly, and establishing a communications link from a remote content server to the user terminal, as taught by Kenner, for the benefit of providing fast access to a wide selection of content distributed across many networks, eliminating the limitation of only making available locally stored content on demand.

Hendricks and Kenner fail to disclose validating the delivery of the content to the user terminal and directly delivering content comprises providing the content to the user terminal without traversing any modules between a remote content server and the user terminal, thereby bypassing an aggregator.

In an analogous art, Campanella discloses validating the delivery of content for the benefit of accurate billing for the delivery of said content (col. 17, lines 60-67).

It would have been obvious at the time to a person of ordinary skill in the art to modify the method disclosed by Hendricks and Kenner to include validating the delivery of content, as taught by Campanella, for the benefit of accurate billing for the delivery of said content.

Hendricks, Kenner, and Campanella fail to disclose directly delivering content comprises providing the content to the user terminal without traversing any modules between a remote content server and the user terminal, thereby bypassing an aggregator.

In an analogous art, Farry discloses a video distribution network (col. 4, lines 10-28) wherein the establishment of a direct link between a requesting subscriber and an information source is through a permanent virtual circuit through a digital cross-connect switch (col. 7, lines 15-22, col. 7, lines 56-64, and col. 11, lines 15-41), providing the benefit of lowered routing delays (col. 2, lines 20-21).

It would have been obvious at the time to a person of ordinary skill in the art to modify the method disclosed by Hendricks, Kenner, and Campanella to establish direct links in the manner disclosed by Farry (thereby bypassing the aggregator), for the benefit of lowering the routing delay in fulfilling a subscriber's request.

5. Claims 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hendricks, Kenner, Campanella, and Farry as applied to claim 1 above, and further in view of Wilkins (5,446,919, of record).

Regarding claim 12, Hendricks, Kenner, Campanella, and Farry disclose the method of claim 11, wherein if the request is a local download request (when content is stored locally in storage device 308, see Hendricks col. 9, lines 50-67 and col. 15 line 47 – col. 16 line 3), performing the steps of:

analyzing metadata related to the requested content, determining, based on the analyzed metadata, if the requested content is in a correct format for delivery to the user terminal, and reformatting the requested content as needed into a required format for delivery to the user terminal , and routing the requested content of the correct format to a content delivery server (where content is formatted as needed depending on who the content is being delivered to, see Hendricks, col. 14, lines 20-38 and col. 15 line 31 – col. 16 line 3, prior to being delivered to the cable headend 207 for distribution, see fig. 1);

analyzing a user profile associated with a user of the user terminal and the content metadata and based on the analyzed user profile and the content metadata applying a digital rights management scheme to the content delivery (see Hendricks, col. 18, lines 39-58 and col. 20 line 50 – col. 21 line 9); and incorporating advertisements into the requested content (Hendricks, col. 17, lines 49-67).

Hendricks, Kenner, Campanella, and Farry fail to disclose the incorporating of advertisements into the requested content includes at least one advertisement targeted to a user of the user terminal.

In an analogous art, Wilkins teaches targeting advertisements to specific users (col. 8, lines 3-41 and col. 11, lines 19-38), for the benefit of improved advertising (col. 4 line 44 – col. 5 line 39).

It would have been obvious at the time to a person of ordinary skill in the art to modify the method disclosed by Hendricks, Kenner, Campanella, and Farry to include targeting advertisements to specific users, as taught by Wilkins, for the benefit of improved, more effective, advertising.

Regarding claim 13, Hendricks, Kenner, Campanella, and Farry disclose the method of claim 11, wherein if the requested content is to be delivered indirectly (Kenner, col. 12, lines 42-55), performing the steps of:

acquiring the requested content via a content acquisition server located in the aggregator (local SRU through which content is routed to a user terminal, Kenner, col. 11, lines 45-51);

if the requested content should be stored at the aggregator local storage (Kenner, col. 9, lines 55-67), performing the steps of:

determining a format of the requested content, if the format of the requested content is not correct for storage, reformatting the requested content, storing the requested content (Hendricks, col. 11, lines 46-60), analyzing

metadata related to the requested content, determining, based on the analyzed metadata, if the requested content is in a correct format for delivery to the user terminal, and reformatting the requested content as needed into a required format for delivery to the user terminal, routing the requested content of the correct format to a content delivery server (where content is formatted as needed depending on who the content is being delivered to, see Hendricks, col. 14, lines 20-38 and col. 15 line 31 – col. 16 line 3, prior to being delivered to the cable headend 207 for distribution, see fig. 1); and

analyzing a user profile associated with a user of the user terminal and the content metadata and based on the analyzed user profile and the content metadata applying a digital rights management scheme to the content delivery (see Hendricks, col. 18, lines 39-58 and col. 20 line 50 – col. 21 line 9); and incorporating advertisements into the requested content (Hendricks, col. 17, lines 49-67).

Hendricks, Kenner, Campanella, and Farry fail to disclose the incorporating of advertisements into the requested content includes at least one advertisement targeted to a user of the user terminal.

In an analogous art, Wilkins teaches targeting advertisements to specific users (col. 8, lines 3-41 and col. 11, lines 19-38), for the benefit of improved advertising (col. 4 line 44 – col. 5 line 39).

It would have been obvious at the time to a person of ordinary skill in the art to modify the method disclosed by Hendricks, Kenner, Campanella, and Farry

to include targeting advertisements to specific users, as taught by Wilkins, for the benefit of improved, more effective, advertising.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dominic D. Saltarelli whose telephone number is (571) 272-7302. The examiner can normally be reached on Monday - Friday 9:00am - 6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Miller can be reached on (571) 272-7353. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

ANDREW Y. KOENIG
PRIMARY PATENT EXAMINER

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